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9 Counsel for Chapter 11 Debtor and Debtor in Possession

10
11 **UNITED STATES BANKRUPTCY COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**
13

14 In re:) Case No. 10-15142-LT11
15 CITIZENS DEVELOPMENT CORP.,)
16 Debtor and Debtor in Possession.) Chapter 11
17)
18)
19) **DEBTOR'S MOTION FOR ORDER**
20) **EXTENDING EXCLUSIVITY PERIOD BY**
21) **SEVEN DAYS FOR FILING PLAN OF**
22) **REORGANIZATION; MEMORANDUM**
23) **OF POINTS AND AUTHORITIES;**
24) **DECLARATION OF MATTHEW C.**
25) **DINOFIA**
26)
27) [Ex Parte Motion for Order Shortening Notice
28) Period filed concurrently herewith]
)
) [The Debtor has requested a hearing date of
) March 1, 2011, at 2:00 p.m.]
)
)
)
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)

1 Citizens Development Corp., the debtor and debtor in possession in the above-entitled
2 Chapter 11 bankruptcy case, hereby moves (the "Motion") for the entry of an order extending the
3 exclusivity period for the Debtor to file a plan of reorganization from March 24, 2011 to March
4 31, 2011. The Debtor seeks the foregoing extension without prejudice to its right to seek further
5 extensions of its exclusivity period to obtain acceptance of its plan of reorganization which period
6 is currently set to expire on May 23, 2011.

7 On January 27, 2011, the Court issued its ruling on the Debtor's substantive consolidation
8 motion and Symphony Asset Pool X, LLC's relief from stay motion. The Court authorized and
9 directed the substantive consolidation of the Debtor's estate with that of LSM Country Club, LLC
10 and LSM Hotel, LLC, and the Court required the Debtor to file a plan of reorganization with
11 evidence of funding on or before March 31, 2011. The Court has scheduled a hearing on the
12 Debtor's disclosure statement for May 25, 2011. The Debtor will file its plan on or before March
13 31, 2011. The Debtor is requesting a seven day extension of its exclusivity period to file a plan of
14 reorganization.

15 The Debtor is attempting to formulate its plan of reorganization and obtain the requisite
16 funds to implement a plan. The Debtor is currently discussing financing opportunities with
17 various cash sources and is determining whether there is a need to hire an investment banker to
18 assist the Debtor in its reorganization efforts. The Debtor is also continuing to operate its
19 consolidated business, has complied with administrative requirements and has met its obligations
20 as a debtor-in-possession. The Debtor requires a seven day extension of its exclusivity period to
21 file a plan of reorganization, through and including March 31, 2011, which is the date the Debtor
22 will unquestionably file its plan of reorganization. If the exclusivity period is not extended, the
23 potential need to defend against competing plans of reorganization will detract from the Debtor's
24 ability to devote its resources to operating its business, negotiating with its lenders, obtaining cash
25 commitments, and presenting its plan of reorganization. The Debtor is requesting an extension in
26 good faith and is requesting a very short extension period which the Debtor does not believe will
27 prejudice any party in interest.

1 Therefore, based on the foregoing, and for other reasons set forth in the Memorandum,
2 the Debtor submits that “cause” exists for granting the Motion and extending the exclusivity
3 period for the Debtor to file a plan of reorganization and obtain acceptance thereof.

4
5 Dated: February 15, 2011

CITIZENS DEVELOPMENT CORP.

6
7 By: /s/ Krikor J. Meshefejian
8 RON BENDER
9 KRIKOR J. MESHEFEJIAN
10 LEVENE, NEALE, BENDER, YOO
11 & BRILL L.L.P.
12 Counsel for Debtor and Debtor in
13 Possession
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 1. On August 26, 2010 (the "Petition Date"), Citizens Development Corp. a
5 California corporation, the debtor and debtor in possession herein (the "Debtor"), filed a
6 voluntary petition under Chapter 11 of 11 U.S.C. § 101 et seq. (as amended, the "Bankruptcy
7 Code"). The Debtor is managing its financial affairs and operating its bankruptcy estate as a
8 debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

9 2. The Debtor is the owner (either directly or through its affiliates), and operator, of
10 Lake San Marcos Country Club & Resort (the "Resort"). The Resort is located on the shores of
11 the 80-acre Lake San Marcos, in San Diego County, approximately 30 miles north of San Diego.
12 The Resort is comprised of 252 acres of land that includes a 139-room hotel (the "Hotel
13 Property", 18,300 square feet of meeting and banquet space, a private 18-hole championship golf
14 course with clubhouse and pro-shop (the "Country Club Property"), a public 18-hole executive
15 golf course, three restaurants, a fitness center, four tennis courts, two outdoor swimming pools
16 and the 80-acre Lake San Marcos.

17 3. On January 27, 2011, the Court issued its ruling on the Debtor's substantive
18 consolidation motion and Symphony Asset Pool X's relief from stay motion. The Court
19 authorized and directed the substantive consolidation of the Debtor's estate with that of LSM
20 Country Club, LLC and LSM Hotel, LLC, and the Court required the Debtor to file a plan of
21 reorganization with evidence of funding on or before March 31, 2011. The Court has scheduled a
22 hearing on the Debtor's disclosure statement for May 25, 2011.

23 4. The Debtor's exclusivity period to file a plan expires on March 24, 2011. The
24 Debtor will file its plan on or before March 31, 2011. The Debtor is requesting a seven day
25 extension of its exclusivity period to file a plan of reorganization so that during the very narrow
26 time between the current expiration date of plan filing exclusivity and the date the Debtor is
27 required to file a plan, another plan is not proposed which would detract the Debtor from pursuing
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1 its own reorganization efforts.

2 5. The Debtor is attempting to formulate its plan of reorganization and obtain the
3 requisite funds to implement a plan. The Debtor is currently discussing financing opportunities
4 with various cash sources and is evaluating the need to hire an investment banker to assist the
5 Debtor in its reorganization efforts. The Debtor is also continuing to operate its consolidated
6 business, has complied with administrative requirements and has met its obligations as a debtor-
7 in-possession.

8 6. The Debtor requires a seven day extension of its exclusivity period to file a plan of
9 reorganization, through and including March 31, 2011, which is the date the Debtor will
10 unquestionably file its plan of reorganization. If the exclusivity period is not extended, the
11 potential need to defend against competing plans of reorganization will detract from the Debtor's
12 ability to devote its resources to operating its business, negotiating with its lenders, obtaining cash
13 commitments, and presenting its plan of reorganization. The Debtor is requesting an extension in
14 good faith and is requesting a very short extension period which the Debtor does not believe will
15 prejudice any party in interest.

16 II.

17 DISCUSSION

18 A. **The Court Has Authority To Extend the Debtor's Exclusivity Periods for the Filing** 19 **of a Plan and Obtaining Acceptance Thereof.**

20 Pursuant to Sections 1121(b) and (c) of the Bankruptcy Code, a Chapter 11 debtor has the
21 exclusive right to file a plan of reorganization for a period of 120 days following the filing of the
22 petition and an additional 60 days thereafter to obtain acceptances to any plan so filed. 11 U.S.C.
23 §§ 1121(b) & (c). Section 1121(d) of the Bankruptcy Code allows the Court to extend or reduce
24 these time periods "for cause." Section 1121(d) of the Bankruptcy Code provides, in pertinent
25 part, as follows:

26 (d)(1) Subject to paragraph (2), on request of a party in interest
27 made within the respective periods specified in subsections (b)
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and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

11 U.S.C. § 1121(d)(1) & (2).

The decision of whether to grant a request to extend or shorten the exclusivity periods lies within the sound discretion of the bankruptcy judge. In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409 (E.D.N.Y. 1989). The “cause” standard referred to in Section 1121 has been referred to as a general standard that allows the bankruptcy court “maximum flexibility to suit various types of reorganization proceedings.” In re Public Service Company of New Hampshire, 88 B.R. 521, 534 (Bankr. D.N.H. 1988).

The Code does not define “cause” or establish formal criteria for an extension of the exclusivity periods, but legislative history indicates that the term “cause” is to be viewed flexibly “in order to allow the debtor to reach an agreement [with its creditors].” H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 220, 231 (1977), U.S. Code Cong. & Admin. News 1978, pp. 5963, 6190 [hereinafter “House Report”]; In Re McLean Industries, Inc., 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987); In re Express One International, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996). Consistent with a balanced, integrated approach to reorganizations under Chapter 11, Congress contemplated that Bankruptcy Courts would apply the exclusivity provisions flexibly so as to promote the orderly, consensual and successful reorganization of a debtor's affairs. See House Report, supra, at 232.

Among the factors to be considered in finding “cause” to extend the exclusivity periods are: (i) the size and complexity of the case (Grand Traverse Devel. Co. Ltd. Partnership, 147 B.R. 418, 420 (Bankr. W.D. Mich. 1992)); (ii) whether a debtor is attempting in good faith to

1 formulate a viable plan and the degree of progress that has been achieved by the debtor in the
 2 Chapter 11 process (In re Jasick, 727 F.2d 1379 (5th Cir. 1984), reh'g denied, 731 F.2d 888 (5th
 3 Cir.)); and (iii) a debtor's satisfaction of its post-petition obligations as they come due (In re
 4 McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987)). While the foregoing are some
 5 of the most common factors, a court has discretion to consider others. See, e.g., Express One,
 6 194 B.R. at 100. For example, the diligence of management and proper administration of the
 7 case is a factor that weighs in favor of an extension of the plan exclusivity periods. See, In re
 8 United Press International, 60 B.R. 265 (Bankr. D.D.C. 1986); In re Trainer's, Inc., 17 B.R. 246,
 9 247 (Bankr. E.D. Pa. 1982).

10 **B. Good Cause Exists To Grant the Debtor's Request To Further Extend the**
 11 **Exclusivity Period For the Debtor To File A Plan of Reorganization By Seven Days.**

12 *1. The Debtor will file its plan of reorganization on or before March 31, 2011.*

13 The Court has set a deadline of March 31, 2011 for the Debtor to file its plan of
 14 reorganization with evidence of funding adequate to implement such a plan of reorganization.
 15 The Court has also tentatively set a hearing on the Debtor's disclosure statement for May 25,
 16 2011. If the Debtor does not file a plan as ordered by the Court, Symphony will be able to
 17 foreclose upon the Hotel Property.

18 The Debtor is attempting to formulate its plan of reorganization and obtain the requisite
 19 funds to implement its plan. The Debtor is currently discussing financing opportunities with
 20 various cash sources and determining whether hiring an investment banker is feasible and
 21 necessary. The Debtor is also continuing to operate its consolidated business, has complied with
 22 administrative requirements and has met its obligations as a debtor-in-possession. The Debtor
 23 will file its plan prior to or on March 31, 2011 in compliance with the Court's order and merely
 24 requests an extension of its exclusivity period through and including March 31, 2011.

25 *2. The Debtor is current with its post-petition obligations.*

26 As discussed herein above, the Debtor is authorized to utilize cash collateral pursuant to
 27 the terms of the Court's order authorizing the Debtor to use cash collateral, and the Debtor has
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1 concurrently filed a motion for authority to further use cash collateral. The Debtor is also
2 negotiating cash collateral stipulations with various of its lenders. To date, the Debtor has
3 utilized its cash collateral to remain current with its post-petition obligations to creditors.
4 Therefore, this factor weighs in favor of extending the Debtor's plan exclusivity periods.

5 3. *The Debtor has been diligent and has properly administered its bankruptcy case.*

6 As discussed above, the Debtor has properly administered its Chapter 11 case in that the
7 Debtor has complied with all of the material requirements of the Bankruptcy Code, the Federal
8 Rules of Bankruptcy Procedure, and the Office of the United States Trustee. The Debtor is also
9 operating under a cash collateral order. Under these circumstances, a short extension of the
10 exclusivity periods for filing a plan of reorganization can be granted with the confidence that the
11 Debtor is in full compliance with the requirements that are conditions to the Debtor maintaining
12 its exclusive right to file a plan of reorganization and gain acceptance thereof. As a result, this
13 factor weighs in favor of extending the Debtor's plan exclusivity periods.

14 4. *The Debtor requests an extension for the purpose of formulating an appropriate*
15 *exit strategy in compliance with the Court's order.*

16 The Debtor's request herein is being made in good faith and not for the purpose of
17 pressuring creditors into acceding to certain plan terms. The requested extension is a seven day
18 extension meant only to ensure that the Debtor may focus on the preparation of its plan and
19 receipt of funding to implement a plan during the crucial days before the Debtor is required
20 submit its plan to the Court. The Debtor's goal is to maximize distributions to all creditors
21 pursuant to a plan but the Debtor does not believe that this goal will be attained if the Debtor is
22 not afforded the entire period of time between now and the date the Debtor is required to file a
23 plan with the Court. The Debtor is not aware of any creditor whose claim or interest would be
24 adversely affected or impaired by the granting of the limited relief requested herein. Therefore,
25 this factor weighs in favor of extending the Debtor's plan exclusivity periods.

26 Thus, based on all of the foregoing, the Debtor submits that good cause exists for granting
27 the relief requested in the Motion.
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III.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter an order:

- (1) extending the exclusivity period for the Debtor to file a plan of reorganization for seven (7) days, to and including March 31, 2011; and
- (2) granting such other and further relief as the Court deems just and proper under the circumstances.

Dated: February 15, 2011

CITIZENS DEVELOPMENT CORP.

By: /s/ Krikor J. Meshefejian
RON BENDER
KRIKOR J. MESHEFEJIAN
LEVENE, NEALE, BENDER, YOO
& BRILL L.L.P.
Proposed Counsel for Debtor and
Debtor in Possession

DECLARATION OF MATTHEW C. DINOFIA

I, Matthew C. DiNofia, hereby declare as follows:

1. I am over 18 years of age. I have personal knowledge of the facts set forth herein, and, if called as a witness, could and would testify competently with respect thereto.

2. I am the President, Chief Executive Officer, and owner of Citizens Development Corp., the Chapter 11 debtor and debtor in possession in the above-referenced bankruptcy case (the "Debtor"). I handle all creditor and lender negotiations for the Debtor. I oversee the management of the Debtor. I handle all potential investor opportunities for the Debtor. I am the person that is most familiar with the Debtor's financial situation and debt structure. I am the only officer of the Debtor that has guaranteed the Debtor's debts.

3. I have access to the books and records of the Debtor and entities related to the Debtor. I am familiar with the history, organization, operations and financial condition of the Debtor. The records and documents referred to in this Declaration constitute writings taken, made, or maintained in the regular or ordinary course of the Debtor's business at or near the time of act, condition or event to which they relate by persons employed by the Debtor who had a business duty to the Debtor and its affiliates to accurately and completely take, make, and maintain such records and documents. I am a custodian of records for the Debtor, and have direct knowledge of how the Debtor maintains its books and records.

4. On August 26, 2010 (the "Petition Date"), Citizens Development Corp. a California corporation, the debtor and debtor in possession herein (the "Debtor"), filed a voluntary petition under Chapter 11 of 11 U.S.C. § 101 et seq. (as amended, the "Bankruptcy Code"). The Debtor is managing its financial affairs and operating its bankruptcy estate as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. The Debtor is the owner (either directly or through its affiliates), and operator, of Lake San Marcos Country Club & Resort (the "Resort"). The Resort is located on the shores of the 80-acre Lake San Marcos, in San Diego County, approximately 30 miles north of San Diego. The Resort is comprised of 252 acres of land that includes a 139-room hotel (the "Hotel

1 Property”, 18,300 square feet of meeting and banquet space, a private 18-hole championship golf
2 course with clubhouse and pro-shop (the “Country Club Property”), a public 18-hole executive
3 golf course, three restaurants, a fitness center, four tennis courts, two outdoor swimming pools
4 and the 80-acre Lake San Marcos.

5 6. On January 27, 2011, the Court issued its ruling on the Debtor’s substantive
6 consolidation motion and Symphony Asset Pool X’s relief from stay motion. The Court
7 authorized and directed the substantive consolidation of the Debtor’s estate with that of LSM
8 Country Club, LLC and LSM Hotel, LLC, and the Court required the Debtor to file a plan of
9 reorganization with evidence of funding on or before March 31, 2011. The Court has scheduled a
10 hearing on the Debtor’s disclosure statement for May 25, 2011.

11 7. The Debtor’s exclusivity period to file a plan expires on March 24, 2011. The
12 Debtor will file its plan on or before March 31, 2011. The Debtor is requesting a seven day
13 extension of its exclusivity period to file a plan of reorganization so that during the very narrow
14 time between the current expiration date of plan filing exclusivity and the date the Debtor is
15 required to file a plan, another plan is not proposed which would detract the Debtor from pursuing
16 its own reorganization efforts.

17 8. The Debtor is attempting to formulate its plan of reorganization and obtain the
18 requisite funds to implement a plan. I, on behalf of the Debtor, am currently discussing financing
19 opportunities with various cash sources and I have also contacted and spoken to on numerous
20 occasions an investment banker to determine whether hiring an investment banker will be
21 beneficial to the Debtor’s reorganization efforts. The Debtor is also continuing to operate its
22 consolidated business, has complied with administrative requirements and has met its obligations
23 as a debtor-in-possession.

24 9. The Debtor requires a seven day extension of its exclusivity period to file a plan of
25 reorganization, through and including March 31, 2011, which is the date the Debtor will
26 unquestionably file its plan of reorganization. If the exclusivity period is not extended, the
27 potential need to defend against competing plans of reorganization will detract from the Debtor’s
28

1 ability to devote its resources to operating its business, negotiating with its lenders, obtaining cash
2 commitments, and presenting its plan of reorganization. The Debtor is requesting an extension in
3 good faith and is requesting a very short extension period which the Debtor does not believe will
4 prejudice any party in interest.

5 I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th
6 day of February, 2011, in San Diego, California.

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Matthew C. DiNofia
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In re:

CITIZENS DEVELOPMENT CORP.,

Debtor(s).

CHAPTER 11

CASE NO. 10-15142-LT11

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document described as: **DEBTOR'S MOTION FOR ORDER EXTENDING EXCLUSIVITY PERIOD BY SEVEN DAYS FOR FILING PLAN OF REORGANIZATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MATTHEW C. DINOFIA** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **February 15, 2011**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- Ron Bender rb@lnbyb.com
- Judith A. Descalso descalso@pacbell.net
- Philip J Giacinti pjg@procopio.com, caw@procopio.com; laj@procopio.com
- Haeji Hong Haeji.Hong@usdoj.gov, USTP.Region15@usdoj.gov; shannon.m.vencill@usdoj.gov; tiffany.l.carroll@usdoj.gov
- Raffi Khatchadourian raffi@hemar-rousso.com
- Dean T. Kirby dkirby@kirbymac.com, jrjgg@kirbymac.com; gsparks@kirbymac.com; rrobinson@kirbymac.com; jcastranova@kirbymac.com; jlewin@kirbymac.com
- Christina Melhouse cm@ldplaw.com
- Krikor Meshefejian kjm@lnbyb.com
- Andrew S. Pauly apauly@gpfm.com
- Richard J. Pekin rpekin@foxjohns.com
- Wayne R. Terry wterry@hemar-rousso.com, mgranzow@hemar-rousso.com
- Kelly Ann Mai Khanh Tran ktran@mkblaw.com, ssandbeck@mkblaw.com
- United States Trustee ustp.region15@usdoj.gov
- Dennis J. Wickham wickham@scmv.com, havard@scmv.com
- Alan Steven Wolf wdk@wolffirm.com; faxes@wolffirm.com

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL: On **February 15, 2011**, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service and/or by attorney service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

By Overnight Mail

Hon. Laura S. Taylor
U.S. Bankruptcy Court
Jacob Weinberger U.S. Courthouse
325 West F Street, Room 129
San Diego, CA 92101-6998

[X] Service list attached

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

None.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

February 15, 2011

Stephanie Reichert

/s/ Stephanie Reichert

Date

Type Name

Signature

II. SERVED BY U.S. MAIL:

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CA State Board Of Equalization
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Sacramento, CA 94279-8006

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701 N. Brand Blvd, 3rd Floor
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Tig Global LLC
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Chicago, IL 60693

Vallecitos Water District
201 Vallecitos De Oro
San Marcos, CA 92069-1453

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San Diego, CA 92123

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Chris Dinofia
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Irving TX 75063-0000

Citicapital Commercial Leasing Corp.
3950 Regent Blvd.
Irving TX 75063-0000

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San Diego CA 92121-0000

Javier Serhan
530 B Street
Suite 1530
San Diego CA 91311-0000

Pacific West Realty Group
2550 5th Avenue, Suite 529
San Diego CA 92103-0000

Telesis / Business Partners
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Chatsworth CA 92101-0000

US Bancorp
P.O. Box 580337
Minneapolis MN 55458-0000

Office of The United States Trustee
402 W. Broadway, Suite 600
San Diego, CA 92101-8511